



State of California – The Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
7329 Silverado Trail
Napa, CA 94558
(707) 944-5500
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



November 3, 2016

Ms. Amy Lyle
Sonoma County
Permit and Resource Management Department
2550 Ventura Avenue
Santa Rosa, CA 95403-2829

Dear Ms. Lyle:

Subject: Notice of Completion of the Negative Declaration for the Medical Cannabis Land Use Ordinance, Sonoma County

The California Department of Fish and Wildlife (CDFW) has reviewed the Medical Cannabis Land Use Ordinance (Ordinance) proposed for Sonoma County. CDFW understands that the Ordinance would amend the Zoning Code to regulate cannabis uses consistent with the Medical Cannabis Regulation and Safety Act.

CDFW is identified as a Trustee Agency pursuant to the California Environmental Quality Act (CEQA) §15386. As a trustee for the State's fish and wildlife resources, CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of those species pursuant to California Fish and Game Code §1802. CDFW is also considered a Responsible Agency if the project would require discretionary approval, such as the California Endangered Species Act (CESA), the Native Plant Protection Act, the Lake and Streambed Alteration Program (Fish and Game Code §§ 1600 – 1616) and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources. Pursuant to our jurisdiction, CDFW has the following concerns, comments, and recommendations regarding the proposed Ordinance.

The Ordinance and associated Negative Declaration (ND) states that on-site water supplies shall be considered adequate if a surface diversion has a "diversion permit" from the State Water Resources Control Board (SWRCB). It also considers a groundwater well an adequate water source if it is outside an area for which a Groundwater Management Plan has been adopted or within a high or medium priority basin as defined by State Department of Water Resources. CDFW has concerns that the proposed criteria may not be sufficient to protect critical instream resources. Sonoma County watersheds contain habitat for State Endangered California freshwater shrimp (*Syncaris pacifica*), State and federally Endangered Central California Coast (CCC) coho salmon and federally Threatened CCC steelhead. Low flow conditions during the drought have resulted in significant declines in salmonid reproduction and survival and under several climate change scenarios, drought year conditions may well persist.

The Ordinance, as currently proposed, does not provide sufficient analysis or measures to be considered protective of instream flows and the fish and wildlife resources that depend upon them. The ND should include an analysis of groundwater/streamflow availability and cumulative impacts to surface and groundwater resources. The ordinance should specify that County Permits

of groundwater wells with the potential to impact streamflow shall also include avoidance, minimization and mitigation measures to protect State and federally listed species and their habitat.

Sonoma County tributaries have historically provided sustained perennial flow which supports spring, summer, and fall rearing habitat for naturally producing California freshwater shrimp, coho salmon and steelhead. Available habitat for these species is limited by lack of flow, especially during the summer and early fall periods. Most of these tributaries are already subject to large numbers of riparian diversions that are cumulatively affecting the amount of water available for instream habitat. In most cases, the exact number, location and extent of diversions are unknown. However, in most upper watersheds, parcels that do not have access to municipal water sources extract water from the watershed whether by direct or indirect surface diversion or by hydrologically connected groundwater. In most cases, these diversions of streamflow are not subject to any conservation measures.

It is not clear if the term "diversion permit" was intended to encompass all forms of water right or is limited to Appropriate Water Right Permits. Diversions which occur under a Riparian or Pre-1914 Right do not receive a "Permit" from the SWRCB. Therefore, the Ordinance's reliance on a "diversion permit" from the SWRCB to establish an 'adequate' water supply may not be a reliable method to ensure that the diversion would not compromise or impact the State's public trust resources.

In cases where a landowner has a valid water right, whether it is a Riparian, Pre-1914 or an Appropriative Right, the diversion of water is not necessarily occurring in a manner that would prevent reductions to groundwater levels or avoid direct affects to instream habitat. Appropriative water rights that have been issued consistent with SWRCB's recent *North Coast Instream Flow Policy to Maintain Instream Resources* (Policy) contain measures such as bypass flows, diversion rate limitations and invasive species management plans which minimize and avoid impacts to listed species. However, a majority of appropriative water rights were issued prior to the implementation of the Policy, and as such, likely operate without any bypass flows or other protective measures.

In cases where a landowner is operating under a Riparian Right, which will be most cannabis projects, SWRCB simply requires that the landowner file a Statement of Use (Statement) which is not subject to any discretionary review. SWRCB does not evaluate the effects of riparian diversions and does not require any measures to offset adverse effects. Riparian diversions generally occur year-round, with peak diversion for irrigation occurring during the lowest flow periods. As such, diversions which occur under a Riparian Right, which have the greatest potential to impact the most critical flow period, are occurring without any protective measures under their water right.

Notification to CDFW is required for any activity that will divert or obstruct the natural flow, change the bed, channel, or bank including associated riparian or wetland resources, use material from the stream/channel bed, or substantially adversely affect fish and wildlife resources. For example, a Lake or Streambed Alteration Agreement (LSAA) may be required when groundwater pumping may substantially interrupt streamflow or requires drilling within the riparian zone. Diversion of water during summer low flow periods in Sonoma County tributaries will likely be substantial and

require a LSAA from CDFW. In addition, wells located within or adjacent to riparian areas that are having an effect on surface flow may also require notification. Issuance of an LSAA is subject to CEQA. CDFW may not execute a Final LSAA until it has complied with CEQA (Public Resources Code section 21000 et seq.) as the Responsible Agency. In order to assure that diversions for cannabis do not have cumulative adverse effects on instream resources, the Ordinance should be revised to require diversions have a valid water right and either a LSAA from CDFW or a written notice stating that the activity is not substantial and would not require a LSAA.

If "take" of any species listed under CESA cannot be avoided during any proposed activities, please be advised that a CESA permit must be obtained (pursuant to Fish and Game Code Section 2080 et seq.). Issuance of a CESA permit is subject to CEQA documentation; therefore, the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the proposed activities will impact any CESA-listed species, early consultation is encouraged, as significant modification to a project and mitigation measures may be required in order to obtain a CESA permit. More information on the CESA permitting process can be found on the CDFW website at: <https://www.wildlife.ca.gov/Conservation/CESA>.

Though Sonoma County tributaries support multiple sensitive species, the survival of coho salmon is at an especially precarious junction. During the drought, CDFW and SWRCB asked landowners for assistance in helping to protect and preserve fragile coho salmon populations by participating in voluntary drought agreements that helped to maintain stream flows for juvenile coho in select watersheds. These agreements limiting existing diversions and enhancing flows were necessary for minimal coho survival. CDFW urges Sonoma County to exercise extreme diligence when reviewing and approving any new activities that would result in new diversions in critical watersheds.

In summary, many older appropriative rights do not include provisions sufficient to protect instream resources and hydrologically connected groundwater wells and riparian diversions do not include any measures to protect instream resources. LSAAs are often the only authorization that provides minimization and avoidance measures needed to protect critical instream resources. CDFW appreciates the opportunity to comment on the Ordinance. CDFW staff is available to meet with you to further clarify our comments and provide technical assistance on any changes necessary to protect resources. If you have any questions, please contact Mr. Tim Dodson, Senior Environmental Scientist (Specialist), at (707) 944-5513; or Ms. Corinne Gray, Senior Environmental Scientist (Supervisory), at (707) 944-5526.

Sincerely,



Scott Wilson
Regional Manager
Bay Delta Region

cc: T. Dodson, K. Weiss, C. Gray